

STATE SETTLEMENT AGREEMENT

I. PARTIES

This Settlement Agreement (Agreement) is entered into by the State of Michigan and Medicis Pharmaceutical Corp. (hereinafter "Medicis"), (hereinafter collectively referred to as "the Parties"), through their authorized representatives.

II. PREAMBLE

As a preamble to this Agreement, the Parties agree to the following:

A. WHEREAS, at all relevant times, Medicis distributed, marketed and sold pharmaceutical products in the United States, including a drug it sold under the trade names Loprox and Loprox IS (hereinafter "Loprox");

B. WHEREAS, on or about August 20, 2004, Relators Debbie Mulqueen, Lisa Altazan, Cynthia Hamilton and Julie Laib (the Relators) filed a qui tam action in the United States District Court for the District of Kansas captioned U.S. ex rel. Mulqueen et al. v. Medicis Pharmaceutical Corp. (hereinafter the "Civil Action"). The United States intervened in the Civil Action on March 27, 2006;

C. WHEREAS, Medicis has entered into a separate settlement agreement (hereinafter referred to as the "Federal Settlement Agreement") with the United States Department of Justice (hereinafter referred to as the "United States") which received settlement funds from Medicis pursuant to Paragraph 1(A) below for the Covered Conduct described in Paragraph E. below;

D. WHEREAS, the State of Michigan alleges that Medicis caused to be

submitted claims for payment for Loprox to its Medicaid program, established pursuant to or in connection with Title XIX of the Social Security Act, 42 U.S.C. § 1396-1396v (the “Medicaid Program”);

E. WHEREAS, the State of Michigan contends that it has certain civil claims, as specified in subparagraphs i, ii and iii below, against Medicis for engaging in the following conduct with respect to the marketing, promotion and sale of Loprox (hereinafter referred to as the “Covered Conduct”). Specifically, the State of Michigan alleges

- i) that from approximately November 2001 through April 2004, Medicis knowingly and willfully promoted the sale and use of Loprox for diaper dermatitis and other skin disorders in children under the age of 10, uses which the United States Food & Drug Administration (FDA) has not approved, i.e., Medicis promoted Loprox for “unapproved” or “off-label” uses.
- ii) that Medicis’ promotion of Loprox for these unapproved uses violated the Food, Drug and Cosmetic Act, 21 U.S.C. §§ 331(a) & (d).
- iii) that the uses of Loprox for diaper dermatitis and other skin disorders in children under the age of 10 are not “medically accepted indications” pursuant to 42 U.S.C. § 1396r-8(k)(6) and that Medicis’ conduct caused false and/or fraudulent claims to be submitted to the State of Michigan Medicaid Programs from November, 2001 through September, 2005, for Loprox dispensed for the treatment of children under 10 for diaper dermatitis and other skin disorders;

F. WHEREAS, Medicis denies the allegations, and this Agreement is neither an admission of liability by Medicis nor a concession by the State of Michigan that its claims are not well founded;

G. WHEREAS, to avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the above claims, the Parties mutually desire to reach a full and final settlement as set forth below:

III. TERMS AND CONDITIONS

NOW, THEREFORE, in reliance on the representations contained herein and in consideration of the mutual promises, covenants, and obligations in this Agreement, and for good and valuable consideration, receipt of which is hereby acknowledged, the Parties agree as follows:

1. As previously agreed between Medicis, the United States and the Medicaid Participating States, Medicis shall pay to the United States and the Medicaid Participating States, collectively, the sum of \$9.8 million, plus interest at the average trust fund rate of 4.75% per annum (\$1,275.34 per day) on \$9.8 million from November 5, 2006, and continuing until and including the day before payment is made (hereinafter "the Settlement Amount"). This sum shall constitute a debt immediately due and owing to the United States on the satisfaction of the conditions of payment set forth in Subparagraph A of this Paragraph, and to the Medicaid Participating States on the satisfaction of the conditions of payment set forth in Subparagraph B of this Paragraph. This debt is to be discharged by payments to the United States and the Medicaid Participating State under the following terms and conditions:

A. As previously agreed between Medicis and the United States, Medicis has paid to the United States the sum of \$5,390,000.00, plus interest accrued thereon at the rate of 4.75 % per annum (\$701.44 per day) from November 5, 2006, continuing until and including the day before complete payment was made (hereinafter "the Federal Settlement Amount"). The Federal Settlement Amount was paid by electronic funds transfer no later than seven (7) business days after Medicis received written payment instructions from the United States, following the United States' delivery of this Agreement, fully executed by the Parties, to Medicis' attorneys. The date of payment by Medicis to the United States is the Payment Date.

B. Medicis shall pay to the Medicaid Participating States the sum of \$4,410,000.00, plus interest accrued thereon at a rate of 4.75% per annum (\$573.90 per day) from November 5, 2006, continuing until and including the day before complete payment is made by transfer to the account designated by the National Association of Medicaid Fraud Control Units ("NAMFCU") Settlement Team (hereinafter "the Medicaid State Settlement Amount"). The NAMFCU Settlement Team shall distribute the Medicaid State Settlement Amount to the Medicaid Participating States following execution and delivery of the State Settlement Agreements, or at any earlier date as otherwise agreed in writing between Medicis and the NAMFCU Settlement Team.

C. The total portion of the Settlement Amount paid by Medicis in settlement for the Covered Conduct to the State of Michigan is \$1,618.46, consisting of a portion paid to the State of Michigan under this agreement and another portion paid to the federal government as part of the Federal Settlement Agreement. The individual portion of the State Settlement Amount allocable to the State of Michigan under this agreement is the sum of \$ 760.64.

D. Contingent upon the Participating States receiving the State Settlement Amount from Medicis and as soon as feasible after receipt, the Participating States agree to pay \$300,000.00 to Relator by electronic funds transfer pursuant to instructions provided by Counsel for the Relator, Carrie M. Brous, Brous Horn LLC.

2. Subject to the exceptions in Paragraph 3 below, in consideration of the obligations of Medicis set forth in this Agreement, conditioned upon Medicis' full payment of the Settlement Amount, the State of Michigan on behalf of itself, its officers, agents, agencies, and departments, hereby agrees to release Medicis, its predecessors, subsidiaries, corporate parents and affiliates, successors and assigns, from any civil or administrative monetary claim the State of Michigan has or may have for any claim submitted or caused to be submitted to the State of Michigan Medicaid Program for the Covered Conduct. No individuals are released by this Agreement.

3. Notwithstanding any term of this Agreement, the State of Michigan specifically does not herein release any person or entity from any of the following claims or liabilities:

A. Any civil, criminal, or administrative liability arising under the State of Michigan tax codes;

B. Any criminal liability;

C. Any civil or administrative liability that Medicis has or may have under any state statute, regulation, or rule not covered by this release;

D. Any liability to the State of Michigan (or any agencies thereof) for any conduct other than the Covered Conduct;

E. Any liability based upon such obligations as are created by this Agreement;

F. Except as explicitly stated in this Agreement, any administrative liability, including mandatory exclusion from the State of Michigan's Medicaid Program;

G. Any liability for express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services;

H. Any liability for failure to deliver goods or services due;

I. Any claims for personal injury or property damage or for other consequential damages arising from the Covered Conduct;

J. Any liability of individuals, including present or former officers, directors, shareholders, employees and agents.

4. In consideration of the obligations of Medicis in this Agreement and the Corporate Integrity Agreement (CIA) entered into between OIG-HHS and Medicis, conditioned upon Medicis' full payment of the Settlement Amount, the State of Michigan agrees to release and refrain from instituting, directing, or maintaining any administrative action seeking exclusion from the State of Michigan Medicaid Program, except as reserved in Paragraph 3, for the Covered Conduct. Nothing in this Agreement precludes the State of Michigan from taking action against Medicis in the event that Medicis is excluded by the federal government, or for conduct and practices other than the Covered Conduct. The State of Michigan does not have the authority to release Medicis from any claims or actions which may be asserted by private payers or insurers, including those that are paid by a state's Medicaid Program on a capitated basis.

5. Medicis waives and shall not assert any defenses Medicis may have to any criminal prosecution or administrative action relating to the Covered Conduct that may be based in whole or in part on a contention that, under the Double Jeopardy Clause in the Fifth

Amendment of the Constitution, or under the Excessive Fines Clause in the Eighth Amendment of the Constitution, this Agreement bars a remedy sought in such criminal prosecution or administrative action.

6. Medicis and its predecessors, subsidiaries, corporate parents and affiliates fully and finally release the State of Michigan, its agencies, employees, servants, and agents from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that they have asserted, could have asserted, or may assert in the future against the State of Michigan, its agencies, employees, servants, and agents, related to or arising from the Covered Conduct and the State of Michigan's investigation and prosecution thereof.

7. The Settlement Amount that must be paid pursuant to Paragraph 1 above will not be decreased as a result of the denial of claims for payment now being withheld from payment by the State of Michigan Medicaid Program or other state or payer related to the Covered Conduct; and, if applicable, Medicis agrees not to resubmit or cause anyone to resubmit to the State of Michigan Medicaid Program or other state payer any previously denied claims that were denied based on the Covered Conduct and agrees not to appeal or cause the appeals of any such denials of claims.

8. This Agreement is intended to be for the benefit of the Parties only. The Parties do not release any claims against any other person or entity, except to the extent provided for in Paragraph 10, below.

9. Medicis waives and shall not seek payment for any of the health care billings covered by this Agreement from any health care beneficiaries or their parents, sponsors, legally responsible individuals, or third party payors based upon the claims defined as Covered Conduct.

10. Medicis warrants that it has reviewed its financial situation and that it currently is solvent within the meaning of 11 U.S.C. §§ 547(b)(3) and 548(a)(1)(B)(ii)(I), and shall remain solvent following payment of the Settlement Amount. Further, the Parties warrant that, in evaluating whether to execute this Agreement, they (a) have intended that the mutual promises, covenants, and obligations set forth constitute a contemporaneous exchange for new value given to Medicis, within the meaning of 11 U.S.C. § 547(c)(1); and (b) conclude that these mutual promises, covenants, and obligations do, in fact, constitute such a contemporaneous exchange. Further, the Parties warrant that the mutual promises, covenants, and obligations set forth herein are intended to and do, in fact, represent a reasonably equivalent exchange of value that is not intended to hinder, delay, or defraud any entity to which Medicis was or became indebted to on or after the date of this transfer, within the meaning of 11 U.S.C. § 548(a)(1).

11. In addition to all other payments and responsibilities under this Agreement, Medicis agrees to pay all reasonable travel costs and expenses for the NAMFCU Settlement Team. Medicis will pay this amount by separate check or wire transfer made payable to the National Association of Medicaid Fraud Control Units after the Participating States execute this agreement or as otherwise agreed by the parties.

12. Except as expressly provided to the contrary in this Agreement, each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

13. Medicis represents that this Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever.

14. This Agreement is governed by the laws of the State of Michigan. This

Agreement constitutes the complete agreement between the Parties. This Agreement may not be amended except by written consent of the Parties.

15. The individuals signing this Agreement on behalf of Medicis represent and warrant that they are authorized by Medicis to execute this Agreement. The State of Michigan signatories represent that they are signing this Agreement in their official capacities and that they are authorized to execute this Agreement.

16. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Agreement.

17. This Agreement is binding on Medicis' successors, transferees, heirs, and assigns.

18. All Parties consent to the State of Michigan's disclosure of this Agreement, and information about this Agreement, to the public.

19. This Agreement is effective on the date of signature of the last signatory to the Agreement (Effective Date of this Agreement). Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

MEDICIS PHARMACEUTICAL CORPORATION

DATED: 10-15-07

BY: _____

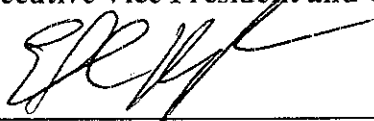


Jason Hanson

Executive Vice President and General Counsel

DATED: 10-29-07

BY: _____




Ethan M. Posner

Covington & Burling LLP

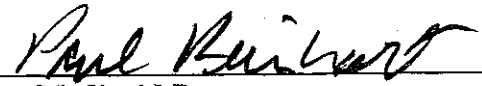
Counsel for Medicis Pharmaceutical Corp.

THE STATE OF MICHIGAN

DATED: 9/10/2007

BY: 
Office of the Attorney General
Medicaid Fraud Control Unit

DATED: 9-4-07

BY: 
Medicaid Program